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THE WALL STREET JOURNAL

The Wall Street Journal

January 5, 2007 Friday

SECTION: Pg. A4

LENGTH: 598 words

HEADLINE: WSJ(1/5) UPDATE: Lilly Settles 18,000 Zyprexa Claims

BODY:

(From THE WALL STREET JOURNAL)

By Avery Johnson

Eli Lilly & Co. moved to settle some 18,000 claims, most of which allege that it failed to adequately warn patients that its blockbuster antipsychotic Zyprexa can cause diabetes. But the drug maker must contend with some 1,200 holdouts and additional suits brought by insurers and state governments.

Lilly said it reached settlement agreements with 14 groups of law firms. The Indianapolis company said it would take a charge of under \$500 million in the fourth quarter to settle the product-liability claims. In 2005, Lilly paid \$700 million to compensate 10,500 claimants.

The company said the cases -- settled or not -- were without merit. John Lechleiter, Lilly's president and chief operating officer, said the firm decided to settle because "it's in the best interest of Lilly, and physicians and patients."

The chairman of the plaintiffs' steering committee, Melvyn Weiss, said the settlement "reflects the judgment of some of the most outstanding tort lawyers in America that these are very difficult cases to try and that it was better to settle." He added, "Zyprexa is taken by people who are seriously ill with complicating diseases and trying these cases can be a daunting task, but I am confident there are cases that are triable."

Nonetheless, the legal troubles aren't over for Lilly and Zyprexa, still its bestseller in 2005 with \$4.2 billion in revenue. The company faces suits brought by third-party payers contending, in large part, that they wouldn't have paid a premium for Zyprexa over other medicines if they had been adequately warned of its risks. And some lawyers say the remaining 1,200 personal-injury cases could still be a threat to the company.

State probes are intensifying. Connecticut Attorney General Richard Blumenthal, in concert with counterparts in other states, has expanded an investigation into Zyprexa's marketing practices and in an interview referred to a "potentially huge claim" alleging that the company promoted the drug to Medicaid and non-Medicaid patients for

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unapproved uses. California's attorney general mounted an investigation in September into the company's marketing of Zyprexa. Some attorneys general have filed suits seeking damages.

"What's left is a significant number of seriously injured plaintiffs' cases pending in state and federal court, and you have a half-dozen or more attorney-general cases and you have third-party payer class-action cases," said William Audet, the founding partner of Audet & Partners, a San Francisco firm representing more than 300 plaintiffs whose cases aren't part of the latest settlement.

Still, Lilly appears to be paying less to settle more cases in this round of legal agreements. The difference may be that Lilly changed Zyprexa's labeling in 2003 to reflect the increased diabetes risk, weakening later cases. Also, some lawyers said that second-round settlements tend to be smaller than the initial ones, since plaintiffs' lawyers tend to bring their strongest cases forward first.

"The current settlement enables Lilly to postpone the disclosure of marketing information that shows its off-label promotion," said Thomas M. Sobol, a lawyer with the Cambridge, Mass., firm Hagens, Berman, Sobol & Shapiro, which brought suit on behalf of insurers.

A Lilly spokeswoman said the company will continue to try cases and that its rationale for settling wasn't to keep damaging information under seal.

Peter Loftus and Heather Won Tesoriero contributed to this article.

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PUBLISHER: Dow Jones & Company, Inc.

LOAD-DATE: January 5, 2007